

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 95-37

October 19, 1995

RE: Must attorney employed by the Department of Workers' Claims withdraw name from cases in which he was involved privately?

DECISION: Yes, if private clients could appear before attorney's agency.

This opinion is in response to your August 31, 1995, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the October 19, 1995, meeting of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are currently employed as the fraud lead attorney for the Department of Workers' Claims. Prior to your state employment, you represented an employer in a case before an administrative law judge and also on appeal to the Workers' Compensation Board. Currently, the case is pending before the Court of Appeals. All briefs concerning the case were submitted to the Court of Appeals prior to your becoming a state employee; however you remain associated with the co-counsel who will complete the case. The case stands ready for a decision.

In addition, you have been involved in two other cases pending before the Court of Appeals which pertain to a declaration of rights involving insurance coverage not related to workers' compensation. You represent the insurance carrier in both cases. You are associated with the co-counsels in these cases who have agreed to complete whatever work is necessary.

You ask for an advisory opinion regarding whether it is necessary for you to withdraw your name from these three cases.

The Commission considers your request in light of the following provisions:

**11A.020 Public servant prohibited from certain conduct --
Disclosure of personal or private interest.**

(1) No public servant, by himself or through others, shall knowingly:

(a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;

....

(2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

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The Commission believes that, in the first situation cited, you must remove your name from the case to avoid the appearance that you are representing both the employer and the Department of Workers' Claims, against whom the suit is filed on appeal. Also, the Court of Appeals likely has the option of remanding the case to the Workers' Compensation Board for additional proceedings. In that case, because the Workers' Compensation Board is attached to the Department of Worker Claims, a clear conflict of interest would exist.

In the second situation, the Commission believes you should remove your name from the cases if it is possible that the insurance companies you represent will come before your agency. This does not mean to imply that you may never represent a private party, such as an individual, because the individual could conceivably incur a work-related injury in the future and appear before your agency. However, if the insurance companies you have represented provide workers' compensation insurance, there is a distinct possibility that the companies may come before the Workers' Compensation Board, and thus you should remove all indications of your association with these cases.

In all three cases, the Commission advises you to withdraw your name in order to avoid a conflict of interest or an appearance of one. In addition, you may want to seek advice from the Kentucky Bar Association concerning this matter.

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BY: Martin J. Huelsmann, Chairman